

SECTION 01 20 00

MEASUREMENT AND PAYMENT PROCEDURES

PART 1 - GENERAL

1.1 SUMMARY

- A. This Document describes the manner in which the amount of payments to the Contractor will be established.
- B. Definitions of the Bid Items identified in the Document 00 41 00 (Bid Proposal), and in conjunction with this Section, is listed in Document 00 24 13 (Scopes of Bids).

1.2 REFERENCES

- A. California Public Contract Code
- B. California Code of Civil Procedures
- C. California Government Code

1.3 SCOPE OF WORK

- A. The Contract Sum for performance of the Work under Contract Documents, or under any bid item, allowance, or alternate, shall include full compensation for all labor, materials, taxes, transport, handling, storage, supervision, administration, and all other items necessary for the satisfactory completion of the Work, whether or not expressly specified or indicated.

1.4 DETERMINATION OF QUANTITIES

- A. Quantity of Work to be paid for under any item for which a unit price is fixed in Contract Documents shall be, as determined by City, number of units of Work satisfactorily completed in accordance with Contract Documents or as directed by City. Unless otherwise provided, determination of number of units of Work so completed will be based, so far as practicable, on actual measurement or count within prescribed or ordered limits, and no payment will be made for Work done outside of limits. Unit Prices shall apply to Work covered by unit prices so long as actual quantities performed on the Project are **[not less than 75 percent or greater than 125 percent]** of the estimated quantities contained in Document 00 41 00 (Bid Proposal) or otherwise referenced in Document 00 24 13 (Scopes of Bids). If actual quantities exceed these parameters, then the unit price shall be adjusted by an amount to reflect the Contractor's incremental cost differential resulting from increased or decreased economies of scale.

1.5 BASIS OF PAYMENT

- A. Unit Price Quantities: When estimated quantity for specific portions of Work is listed in Bid Proposal, quantity of Work to be paid for shall be actual number of units

satisfactorily completed, as determined by City and certified by Contractor, in accordance with the Contract Documents.

- B. Lump Sum: When estimated quantity for specific portion of Work is not indicated and Work is designated as lump sum, payment will be on a lump sum basis for Work satisfactorily completed in accordance with Contract Documents.
- C. Allowances: Allowance items (if any) will be paid for as provided in Document 00 24 13 (Scopes of Bids) and Document 00 41 00 (Bid Proposal). Funds authorized for Allowance Work will not be released for Contract payments unless City has authorized Allowance Work in writing. Unused allowance amounts at Contract completion shall reduce the Contract price accordingly.
- D. Alternates: Alternate items (if any) will be paid for as provided in Document 00 24 13 (Scopes of Bids) and Document 00 41 00 (Bid Proposal). City will determine whether to include all or some the Alternates Work as part of the Contract prior to contract award.
- E. City does not expressly, or by implication, agree, warrant, or represent in any manner, that actual amount of Work will correspond with amount shown or estimated and reserves right to increase or decrease amount of any class or portion of Work, to delete entire Bid item or items, or to add work not originally included in Bid or Contract Documents, when in its judgment such change is in best interest of City. No change in Work shall be considered a waiver of any other condition of Contract Documents. No claim shall be made for anticipated profit, for loss of profit, for damages, or for extra payment whatever, except as otherwise expressly provided for in the Contract Documents, because of any differences between amount of Work actually done and estimated amount as set forth herein, or for elimination of Bid items.
- F. No payment shall be made for materials or equipment not yet incorporated into the Work, except as expressly specified otherwise in Section 01 11 00 (Summary of Work).

1.6 **PROGRESS PAYMENTS**

- A. If requested by Contractor, progress payments will be made monthly.
- B. Schedule of Values:
 - 1. Within ten (10) Days from issuance of Notice of Award and prior to the Contractor's first Application for Payment, Contractor shall submit a detailed breakdown of its Bid by scheduled Work items and/or activities, including coordination responsibilities and Project Record Documents responsibilities. Where more than one Subcontractor comprises the work of a Work item or activity, the Schedule of Values shall show a separate line item for each subcontract. Contractor shall furnish such breakdown of the total Contract Sum by assigning dollar values (cost estimates) to each applicable Progress Schedule network activity, which cumulative sum equals the total Contract Sum. This breakdown shall be referred to as the Schedule of Values.

2. Contractor's overhead, profit, insurance, cost of bonds (except to the extent expressly identified in a Bid item) and/or other financing, as well as "general conditions costs," (e.g., Site cleanup and maintenance, temporary roads and access, off-Site access roads, temporary power and lighting, security, and the like), shall be prorated through all activities so that the sum of all the Schedule of Values line items equals Contractor's total Contract Sum, less any allowances designated by City. Scheduling, record documents and quality assurance control shall be separate line items.
 3. City will review the breakdown in conjunction with the Progress Schedule to ensure that the dollar amounts of this Schedule of Values are, in fact, fair market cost allocations for the Work items listed. Upon favorable review by City, City will accept this Schedule of Values for use. City shall be the sole judge of fair market cost allocations.
 4. City will reject any attempt to increase the cost of early activities, i.e., "front loading," resulting in a complete reallocation of moneys until such "front loading" is corrected. Repeated attempts at "front loading" may result in suspension or termination of the Work for default, or refusal to process progress payments until such time as the Schedule of Values is acceptable to City.
- C. Monthly Report Sheets and Applications for Payment: Contractor shall establish and maintain records of cost of the Work in accordance with generally accepted accounting practices, reconcile the amount of Work completed monthly with City, and sign City's monthly report sheet certifying to the Work done. Monthly report sheets shall be considered the true record of the Cost of the Work and Contractor shall submit in a form acceptable to City an itemized cost breakdown of Contractor's record of Cost of the Work together with supporting data and any certification required by City. In addition:
1. On or before the sooner of (a) the 20th Day of each month and (b) receipt of City's approval of the updated Schedule as required by Section 01 32 16 (Progress Schedules and Reports), Contractor shall submit to City five copies of an Application for Payment for the cost of the Work put in place during the period from the 15th Day of the previous month to the 15th Day of the current month, along with one copy of the City-approved updated Schedule. Such Applications for Payment shall be for the total value of activities completed or partially completed, based upon Schedule of Values prices (or Bid Item prices if unit price) of all labor and materials incorporated in the Work up until midnight of the last Day of that one month period, less the aggregate of previous payments. Accumulated retainage shall be shown as separate item in payment summary. City and Contractor will reconcile any differences in the field, based on the reconciled monthly report sheets. If Contractor is late submitting its Application for Payment, that Application may be processed at any time during the succeeding one-month period, resulting in processing of Contractor's Application for Payment being delayed for more than a Day-for-Day basis.
 2. Except as otherwise provided in a labor compliance program applicable to the Work (if any) or as otherwise required by City, concurrently with each Application

for Payment, Contractor shall submit to the City the Contractor's and its Subcontractors' certified payroll records required to be maintained pursuant to Labor Code Section 1776 for all labor performed during pay periods ending during the period covered by the Application for Payment.

3. No progress payment will be processed prior to City receiving all requested, acceptable schedule update information and certified payrolls. Failure to submit a schedule update complying with Section 01 32 16 (Progress Schedules and Reports) and certified payrolls complying with Labor Code Section 1776, justifies denying the entire Application for Payment in City's sole and absolute discretion.
4. Each Application for Payment shall list each Change Order and Construction Change Directive ("CCD") executed prior to date of submission, including the Change Order/CCD Number, and a description of the Work activities, consistent with the descriptions of original Work activities. Contractor shall submit a monthly Change Order/CCD status log to City.
5. If City requires substantiating data, Contractor shall submit information requested by City, with cover letter identifying Project, Application for Payment number and date, and detailed list of enclosures. Contractor shall submit one copy of substantiating data and cover letter for each copy of Application for Payment submitted.
6. If Contractor fails or refuses to participate in monthly Work reconciliations or other construction progress evaluation with City, Contractor shall not receive current payment until Contractor has participated fully in providing construction progress information and schedule update information to City.

D. Progress Payments

1. City will review Contractor's Application for Payment following receipt. If adjustments need to be made to percent of completion of each activity, City will make appropriate notations and return to Contractor. Contractor shall revise and resubmit. All parties shall update percentage of completion values in the same manner, i.e., express value of an accumulated percentage of completion to date.
2. If City determines that portions of the Application for Payment are not proper or not due under the Contract Documents, then City may approve the other portions of the Application for Payment, and in the case of disputed items or Defective Work not remedied, may withhold up to 150 percent of the disputed amount from the progress payment.
3. Pursuant to California Public Contract Code §20104.50, if City fails to make any progress payment within thirty (30) Days after receipt of an undisputed and properly submitted Application for Payment from Contractor, City shall pay interest to the Contractor equivalent to the legal rates set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure. The 30-Day period shall be reduced by the number of Days by which City exceeds the seven-Day return requirement set forth herein.

4. As soon as practicable after approval of each Application for Payment for progress payments, City will pay to Contractor in manner provided by law, an amount equal to ninety-five percent (95%) of the amounts otherwise due as provided in the Contract Documents, or a lesser amount if so provided in the Contract Documents, provided that payments may at any time be withheld if, in judgment of City, Work is not proceeding in accordance with Contract, or Contractor is not complying with requirements of Contract, or to comply with stop notices or to offset liquidated damages accruing or expected.
5. Before any progress payment or final payment is due or made, Contractor shall submit satisfactory evidence that Contractor is not delinquent in payments to employees, Subcontractors, suppliers, or creditors for labor and materials incorporated into Work. This specifically includes, without limitation, conditional lien release forms for the current progress payment and unconditional release forms for past progress payments. This also includes copies of certified payroll from contractor and subcontractors for the current payment period.

1.7 **FINAL PAYMENT**

- A. As soon as practicable after all required Work is completed in accordance with Contract Documents, including punch list, testing, record documents and Contractor maintenance after Final Acceptance, City will pay to Contractor, in manner provided by law, unpaid balance of Contract Sum of Work (including, without limitation, retentions), or whole Contract Sum of Work if no progress payment has been made, determined in accordance with terms of Contract Documents, less sums as may be lawfully retained under any provisions of Contract Documents or by law.
- B. Prior progress payments and change orders shall be subject to audit and correction in the final payment. City's determination of amount due as final payment shall be final and conclusive evidence of amount of Work performed by Contractor under Contract Documents and shall be full measure of compensation to be received by Contractor.
- C. Contractor and each assignee under an assignment in effect at time of final payment shall execute and deliver at time of final payment, and as a condition precedent to final payment, Document 00 52 17 (Agreement and Release of Any and All Claims).

PART 2 – PRODUCTS NOT USED

PART 3 – EXECUTION NOT USED

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